

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

CEDRIC BELL #248097,

Plaintiff,

NO. 2:20-cv-10193

v

HON. BERNARD A. FRIEDMAN

STATE OF MICHIGAN
ADMINISTRATIVE BOARD
OF CLAIMS, *et al.*,

MAG. ANTHONY P. PATTI

Defendants.

Cedric Bell #248097
In Pro Per
Saginaw Correctional Facility
9625 Pierce Road
Freeland, MI 48623

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DEFENDANT MDOC'S MOTION FOR DISMISSAL

The Michigan Department of Corrections (MDOC), through counsel, brings this motion under Fed. R. Civ. P. 12(b), and asks the Court to enter an order granting summary dismissal in its' favor and dismissing MDOC, based on the grounds set forth in the accompanying brief.

Concurrence has not been sought in this matter because nonmovant is an incarcerated prisoner proceeding pro se. E.D. Mich. LR 7.1(a)(2)(C).

Respectfully submitted,

Dana Nessel
Attorney General

/s/ Allan J. Soros
Allan J. Soros (P43702)
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Dated: September 29, 2021

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HON. BERNARD A. FRIEDMAN

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**DEFENDANT MDOC'S BRIEF IN SUPPORT OF
MOTION FOR DISMISSAL**

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Date: September 29, 2021

CONCISE STATEMENT OF ISSUES PRESENTED

1. 42 U.S.C. § 1983 does not waive the Eleventh Amendment immunity enjoyed by a state, its agencies, or its officials acting in their official capacities. Should this Court dismiss against the Michigan Department of Corrections?

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Authority:

1. Eleventh Amendment Immunity: *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100, 120 (1984) (holding that the Eleventh Amendment to the United States Constitution bars suit in federal court against a state, its agencies, and officials sued in their official capacity, unless this immunity is expressly waived by either the state or Congress).

STATEMENT OF FACTS

Plaintiff, Cedric Bell, (“Bell”), is a *pro se* prisoner who is currently confined in the Michigan Department of Corrections (“MDOC”) at the Saginaw Correctional Facility (SCF), Freeland, Michigan. Bell’s Complaint is filed under 42 U.S.C. § 1983 and protests infringement of his civil rights, alleging violations of the First and Eighth Amendments of the United States Constitution.

Despite the fact that Bell has not listed MDOC as a defendant in his amended complaint and that there are no allegations involving MDOC, a waiver of service and copy of Bell’s amended complaint was mailed to MDOC. (ECF No. 44, PageID.629).

I. MDOC is entitled to Eleventh Amendment immunity.

MDOC is a Michigan state agency. The Eleventh Amendment to the United States Constitution bars suit in federal court against a state, its agencies, and officials sued in their official capacity, unless this immunity is expressly waived by either the state or Congress.

Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100, 120

(1984). Absent express waiver of this immunity, no action may lie

against the state, its agencies, or officials. *Id.*; *Seminole Tribe of Fla. v.*

Florida, 517 U.S. 44, 64–65 (1996). Michigan has not consented to suit.

See Nelson v. Miller, 170 F.3d 641, 646 (6th Cir. 1999) (finding it is undisputed that the State has not consented to suit and analyzing plaintiff's claims under the *Ex Parte Young* and abrogation exceptions to the Eleventh Amendment).

Moreover, 42 U.S.C. § 1983 does not abrogate Eleventh Amendment immunity. In *Quern v. Jordan*, 440 U.S. 332, 341 (1979), the United States Supreme Court stated, “we simply are unwilling to believe . . . that Congress intended by the general language of § 1983 to override the traditional sovereign immunity of the States.”

Additionally, the language of § 1983 itself does not permit suits against a state or its agencies. The Supreme Court “h[e]ld that neither a State nor its officials acting in their official capacities are ‘persons’ under § 1983.” *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989).

Finally, this Court’s May 18, 2020, Opinion and Order of Partial Dismissal has already determined that claims against the MDOC are barred by the Eleventh Amendment. (ECF No.7, PageID.404, n.2). Accordingly, this Court should dismiss the MDOC.

CONCLUSION AND RELIEF REQUESTED

MDOC is entitled to Eleventh Amendment and requests that the Court grant its' Motion for Dismissal and dismiss the MDOC from this suit.

Respectfully submitted,

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Dated: September 29, 2021

Soros\FED Intake\Bell 2020-0290627-A\MDOC Mot to Dismiss & BIS

CERTIFICATE OF SERVICE

I certify that on **September 29, 2021**, I electronically filed **DEFENDANT MDOC'S MOTION FOR DISMISSAL AND BRIEF IN SUPPORT**, with the Clerk of the Court using the ECF system and I certify that my secretary, Joleen McQuiston, has mailed by U.S. Postal Service the papers to the following non-ECF participant(s):

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